HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 18264 of 2007

Dated 28.08.2007

Between:

R.Nancharaiah.

…Petitioner

and

The District Cooperative Officer and others.

…Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 18264 of 2007

O R D E R:

The petitioner is the Secretary of the Kovvali Large Sized Cooperative Society Limited, 3rd respondent herein. Surcharge proceedings were initiated against him, alleging misappropriation of the funds of the Society. Ultimately, a surcharge order was passed on 10.05.2005 holding that the petitioner is liable to pay a sum of about Rs.4,00,000/-. Aggrieved thereby, the petitioner filed an

appeal before the Co-operative Tribunal, Visakhapatnam. An order of interim stay was granted, on condition that the petitioner deposits half of the disputed amount. The condition was not complied with. It is stated that W.P.No.2071 of 2005 was filed before this Court, as regards the stay of the surcharge order. Though the writ petition was admitted, no interim order was passed therein.

Since the petitioner did not comply with the conditions imposed by the Tribunal, while granting stay, the Society initiated proceedings for recovery. An item of immovable property belonging to the petitioner was brought to sale on 27.04.2006. Since there were no satisfactory bids, the property was set off in favour of the society on 29.05.2006. The petitioner contends that the sale certificate was issued on 21.04.2007. The same is challenged in this writ petition.

It is contended that the society initiated Criminal proceedings against the petitioner, in pursuance of the surcharge order, and that he was arrested on 15.03.2006 and was released on 23.05.2006. The petitioner states that the sale took place, at a time, when he was in jail and that no notice was issued as contemplated under law.

Heard the learned counsel for the petitioner and the

learned Government Pleader for Co-operation.

It is not in dispute that an effective alternative remedy, by way of appeal, is available to the petitioner, under Section 76 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act'). Further, the respondents have filed E.P.No.5/05-06 in the Court of Principal Senior Civil Judge, Eluru under Rule 97 of Order XXI C.P.C. The petitioner can put forward all his objections, before the executing Court, to the extent permissible under Section 47 C.P.C.

Hence, the writ petition is disposed of, leaving it open to the petitioner to avail the remedies provided for under C.P.C. or the Act and the Rules made thereunder; and the concerned Court or the authority, as the case may be, shall consider the same in accordance with law. There shall be no order as to costs.

28.08.2007

Note: Issue C.C. in one week.

(B/o)

JSU